

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN GRAESSER,

Defendant.

Case No. CR07-5234RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Defendant's Motion for Appointment of Second Defense Counsel, Motion for Discovery, and Motion to Continue Trial [Dkt. #62]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

The defendant is charged by indictment with one count of arson of a building used in, or affecting, interstate commerce. Specifically, the government alleges that on or about December 4, 2004, the defendant maliciously destroyed by means of fire, the Admiralty One Condominium Building #12, and did damage to Buildings Nos. 11 and 13 at The Resort at Port Ludlow. Defense counsel indicates that this case is complex and the government does not disagree. Apparently, the fire started in a car parked under the building and spread to the condominiums above. Counsel indicates that the investigation is time consuming and will require the assistance of three to four experts for consultation and/or testimony. Experts being sought for consultation include an arson investigator, a DNA specialist, and two experts in the field of mental health.

1 Although complex, this case is not so complex as to warrant a second appointed defense counsel.
2 Defendant's request for a second appointed counsel is **DENIED**.

3 Defendant seeks unredacted copies of documentary discovery, DNA reports, and access to physical
4 evidence. The government indicates that accommodations can be made to provide this discovery to
5 defense counsel. The defendant's motion as to discovery is **DENIED WITHOUT PREJUDICE**. If after
6 a discovery conference there are still items in dispute, defendant may renew his motion.

7 The current trial date is April 8, 2009. Due to the complex nature of this case as set forth above,
8 the defendant seeks a continuance into the Fall of 2009. The procedural history of this case is rather
9 torturous and has been drawn out over a long period of time. The fire occurred in December, 2004. The
10 defendant was arrested on March 7, 2007 in Alaska and initially appeared in this District on March 28,
11 2007. He was arraigned on April 20, 2007 and his first trial date was set for June 5, 2007. Since his
12 arraignment, the defendant has "fired" two appointed attorneys, has represented himself pro se, and has
13 had five continuances of his trial date. Mr. Cena, his third appointed counsel, was appointed on September
14 3, 2008. Based on this history, the government opposes this sixth request for a continuance.

15 The Court is mindful of the government's concerns about the delay's effects on their witnesses and
16 on the public's right to a speedy trial. The Court is most concerned, however, that counsel has the
17 adequate time and resources to meet the charge against the defendant. The motion to continue is
18 **GRANTED**.

19 The Court finds that the defendant has consented to the requested continuance as evidenced by his
20 signed Waiver of Right to a Speedy Trial. [Dkt. #65]. The Court further finds that the ends of justice
21 served by the grant of a continuance in this matter outweigh the better interests of the public and the
22 defendant in a more speedy trial because to deny the requested continuance would deny counsel the
23 reasonable time necessary for effective preparation. 18 U.S.C. §§3161(h)(8)(A) and (B)(iv).


24 The new trial date is June 22, 2009 at 9:00 a.m. Pretrial motions, if any, shall be filed on or before
25 May 15, 2009. The time between the date of this Order and June 22, 2009 is excluded from computation
26 under the Speedy Trial Act, 18 U.S.C. §§3161, *et. seq.*

1 Defendant's Motion for Appointment of a Second Defense Counsel is **DENIED**, Motion for
2 Discovery is **DENIED WITHOUT PREJUDICE**, and Motion to Continue Trial is **GRANTED**. [Dkt.
3 #62].

4 **IT IS SO ORDERED.**

5 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party
6 appearing pro se.

7 Dated this 18th day of March, 2009.

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10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE
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